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Supreme Court, U.S.
FILED

03 - 63 JUN 30 2003

No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

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Irwin Eisenstein
PETITIONER

- vs. -

Thomas Zampino, James Troiano, Donald Volker Jr., P. Mercado, Karen D. Haber et al, Miriam Ebsworth, PSI, the Governor of New Jersey, New Jersey Administrative Office of the Courts, John Doe, Jane Doe
RESPONDENT(S)

_____

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS FOR
THE THIRD CIRCUIT

_____

PETITION FOR WRIT OF CERTIORARI

_____

Irwin R. Eisenstein,
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46 pp

Introduction

The original action had two parts (One part was a sealed False Claims Act complaint). The beginning of each part of the complaint summarized the causes of action. Each action was later explained in detail. The District Court said it did not understand the complaint.

Petitioner requested injunctive relief, and declaratory relief questioning the "Procedural" and "Substantive" Due Process violations of The Cost of Living Adjustment procedure used to increase child support in New Jersey. This procedure assigns COLA without any hearing, even when one is requested, and does not allow a timely hearing after the COLA is assigned.

Any defects in the sealed part of the complaint could have been easily corrected. It was not served upon any defendants.

Questions Presented

1. Did the District and Appellate Court dismiss this action prematurely, and improperly, without addressing the merits of the complaint, including the violations of "Due Process", without allowing petitioner an opportunity to amend the complaint?

2. Did the District and Appellate Courts abuse their discretion by failing to follow controlling decisions by this court?

3. Did the Courts err when they failed to clarify, with specificity, any defects in the False Claims action that could not have been corrected?

Parties To Proceedings

All named parties are included on the cover page.

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All Rule 28(j) requests to admit additional information were denied. There were six (6) requests to supplement the record based upon newly discovered information, misstatement of material facts by the District Court Judge, and decisions by the U.S. Supreme Court that should be controlling (See Swierkiewicz v Sorema N.A. 001853 decided February 26, 2002.) Each request to supplement the record was denied and said "The forgoing is denied."

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Treatises

Computer Matching in State Administered Benefit Programs, A Manager's Guide to decision making, Department of Health and Human Services, Office of Inspector General, Richard P. Kusserow, Inspector General, June 1984 (more up to date guides are now available), This booklet(40 pages) describes computer matching criteria and cost benefits available. Obviously, there are no cost benefits to states when they reduce administrative reimbursements and bonus payments. 23

U.S. Census 1990 22

Petitioner respectfully prays that a writ of certiorari issue to review the decision below.

Opinions Below

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished. The opinion of the United States District Court appears at Appendix B to the petition and is unpublished.

Petitioner requested an En Banc hearing or a rehearing by the original panel of a decision by a panel of the Third Circuit. Both were denied (The panel was composed of: Judges Alito, Barry, and Garth). This case was appealed from a decision of the District Court (D. N.J., William. G. Bassler, J.). The District Court dismissed this action for failure to follow Rule 8 (e), and because the complaint "failed to comply with the filing and statutory requirements of the False Claims Act (31 U.S.C. §§ 3729 et seq.)." The Appellate Court Affirmed (See Appendix A, Page 3 for the Third Circuit decisions; See Appendix B, Page 10-15 for the District Court decisions).

This Court Has Jurisdiction Over This Appeal.

This court has jurisdiction over the appeal pursuant to 28 U.S.C. § 1254(1).

Constitutional And Statutory Provisions Involved

The action was brought under the First, Fifth, and Fourteenth Amendments, 28 U.S.C. § 1331, the False Claims Act ('FCA'), 31 U.S.C. §§ 3729 et seq., 42 U.S.C. §§ 602 et seq., 42 U.S.C. § 667(b), 42 U.S.C

§§ 1983 et seq., and other federal statutes, Constitutional claims and provisions and pendant state claims.

Amendment XIV

Section 1. ... 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' (See Article IV Section 2[1] of the Constitution.)

42 U.S.C. § 1983

1983 provides in pertinent part that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 667(b)

Section 667 of the United States Family Support Act of 1988, entitled "State Guidelines for Child Support Awards," states in pertinent part:

(b)(2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case (See 42 U.S.C. § 667).

Statement Of The Case

Justice Souter of this court granted an extension until July 7, 2003, to file a petition for a writ. The Appellate Court erred in their decision of January 9, 2003, and in the denial of an En Banc Hearing (February 7, 2003).

The District Court Judge dismissed the action by order dated June 1, 2001. A demand for reconsideration was filed. The court denied reconsideration in an order dated October 11, 2001. The summons and complaint was filed on May 7, 2001.

Summary of The Case

The defendants are noted in the caption. The lower courts dismissed the complaint saying that they did not understand it.

The order drafted by the Federal Appellate Court concurred with the District Court, but failed to

address errors in fact in the District Court decisions, failed to apply controlling decisions by this court, and failed to allow a chance to amend the complaint.

The District Court Judge signed the order before plaintiff received the proposed order to dismiss from the U.S. Justice Department. A demand for reconsideration was filed and this was rejected by the District Court in an order dated October 11, 2001. The Third Circuit dismissed the appeal concurring with the District Court opinion, and denied a rehearing En Banc on February 7, 2003.

Reasons For Granting The Writ

There are causes of action in petitioner's complaint that show a regular, systemic denial of Due Process. Issues raised in this complaint have been settled by this court but were not being applied by the Third Circuit.[1] There are conflicts in law between States in interpreting 42 U.S.C. § 667 (b).

A - Cost Of Living Adjustment Are Applied To Child Support Orders Without Any Prior Hearing.

The first cause of action in the complaint

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[1] This Court decided Cook County, Illinois *v.* United States *ex rel.* CHANDLER after the Third Circuit dismissed the action (March 2003). The brief submitted to the Third Circuit contained the following question: "Whether the Appellate Court failed to clarify if local governments could be included in a false claim action, even though there are triple damages, and the statute may be punitive, when there is a waiver of immunity in the Federal statute accepted by the local government?

described a procedural due process violation that occurs regularly in New Jersey. COLA is assigned to child support without allowing a prior hearing. In petitioner's case, COLA was applied to an order that included an adult who was emancipated in 1997! Even though a hearing was requested before the assignment of COLA, and written objections were submitted, COLA was assigned, and the hearing has never taken place.[2] The issues raised by this complaint are likely to recur without review (Honig v. Doe, 108 S. Ct. 592(1988)).

B - Regular, Systemic, Denials Of Due Process Justify Review By This Court.

The Federal and State Courts must function to protect rights even when they have to determine that there are errors in State court rules, in the judicial process, or in a department that was established and run by the New Jersey Administrative Office of the Courts whose function is to collect child support.

Courts must function to insure that the public has confidence in the judicial process[3].

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[2] Cola was assigned in 2000 to petitioner's child support, and again in 2002 while this action was in progress. The lower New Jersey State Court sealed the case-preventing petitioner from taking any court action. This did not prevent the group that assigns COLA from increasing child support a second time!

[3] Edward D. Re, Due Process, Judicial Review, and the Rights of the Individual, Cleveland State Law Review vol. 39 (1991), at 13. "The modern emphasis on due process, the availability of creative judicial remedies, and the role of the

The causes of action in the complaint are not complex or too difficult to understand. Although not all questions raised in the District Court complaint are presented in this writ, the causes of action presented show a denial of procedural due process and violations of rights under color of law.[4]

Specifically, in allocating "COLA" in child support reviews, New Jersey does not considered changes in circumstances, there is no prior hearing before the government taking even.when one is requested, and the review after the taking is not timely.

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courts in reviewing actions of government officials, are some of the reasons which have caused countless persons to resort to the courts for a redress of all sorts of grievances. While these cases may burden the courts, they are also an expression of confidence in the judicial system. It is a tribute to the American legal system that any person can challenge governmental action in a court of law, and have the realistic expectation that, if there is a legitimate relevance, the wrong or grievance will be redressed.

[4] Id. at 13, Prior to his appointment to the Supreme Court, Justice Cardozo, with characteristic eloquence, stated that the "chief worth" of the judiciary is not manifested in the few cases "in which the legislature has gone beyond the lines that mark the limits of discretion," but rather, "in making vocal and audible the ideals that might otherwise be silenced, in giving them continuity of life and expression. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 92-94 (1921).

There is an abuse of power without any remedy.[5]

Due process of law serves to check the abuse of power[6].

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[5] Id. at 13, Speaking of the role of the Supreme Court, also writing before his appointment to the Court, Justice Frankfurter noted:

> I know of no other peaceful method for making the adjustments necessary to a society like ours — for maintaining the equilibrium between state and federal power, for settling the eternal conflicts between liberty and authority — than through a court of great traditions free from the tensions and temptations of party strife, detached from the moment (See F. FRANKFURTER, LAW AND POLITICS 52-53 (A. MacLeish & E. Prichard Jr., eds. 1939).
>
> In a federal system founded upon the separation of powers and the rule of law, all branches of government perform indispensable functions. Nevertheless, without the beneficial scrutiny of judicial review, government officials may on occasion forget that all public servants are duty bound to obey the law, and protect the rights of the persons whom they are to serve.

[6] Id. at 13, "The guarantee of due process of law, as embodied in the Fifth and Fourteenth Amendments to the Constitution, and as interpreted by the courts, provides for fair treatment for all who are affected by government action. It implies that a person will receive fairness of treatment, and a procedure designed to achieve a just and equitable result. The guarantee of due process serves to check or control the misuses of abuse of power, and ensures that other rights and privileges protected by the Constitution and laws are given force and effect. By confining the agents of government to their properly delegated authority under the Constitution and laws, due process of law provides

Based upon The following analysis, the judgment of the United States District and Appellate Court for the Third Circuit should be reversed.

I - The Complaint Included Causes Of Action That The Average Person Would Understand, Was Pleaded Appropriately, And Was Improperly Dismissed.

The District Court signed the order to dismiss without allowing petitioner an opportunity to modify the complaint. This court has allowed a liberal interpretation of complaints by non-attorneys, and at times even suggested that the court interpret a complaint using any cause of action that may be available to a petitioner (See Swierkiewicz v Sorema N.A (Feb. 2002); Bower v Hardwick, 478 U.S. 186 (1986), Chief Judge Berger dissent).

In Scheuer v Rhodes, 416 U.S. 232(1974), 94 S.Ct. 1683, 40 L.Ed.2d 90, this court said:

> "[w]hen a federal court reviews the sufficiency of a complaint, * * * the issue is * * * whether the claimant is entitled to offer evidence to support the claims." "In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46

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a fundamental cornerstone for a free and lawful society.

(1957)...).

Even the District Court Judge admitted that he could understand parts of the complaint.[7]

A - The Department Of Justice, A Non-Defendant, Erred In Submitting A "Suggestion Of Dismissal".

The Justice Department (hereafter Justice) was not a party to parts of the complaint. They were only served to join in the sealed part of the complaint. Justice submitted a motion to dismiss saying that they did not understand the complaint. However, they never requested any clarifications as required in FRCP 12(e). They failed to respond to designated averments or paragraphs in the complaint, contrary to FRCP 8(b). Justice had no standing to submit a proposed order to dismiss the entire complaint.

This complaint alleges that State actors and private parties have violated due process, and committed fraud under "color of law". They have done so in their administrative capacities. Petitioner, after receiving what he believed to be the proposed order to dismiss, contacted Justice and suggested that he meet with them. He wrote a letter

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[7] "To decline to dismiss your complaint in this case would unfairly prejudice the defendants, who can not reasonably be asked to defend against legal claims that neither they nor the Court ***fully*** understand.[emphasis added]"

to Justice explaining the causes of action, and offered to meet to explain and clarify any issues that Justice did not understand. They refused to meet.

The District Judge had already signed the proposed order. It was signed before petitioner received the proposed order!

B - Petitioner's Complaint Was Not Interpreted Liberally.

The Supreme Court has said that "Pro se complaints are held to less stringent standards than formal pleadings by lawyers." Jenkins v. McKeithen, 395 U.S. 411, 421 (1969); Haines v. Kerner, 92 S.Ct. 594 (1972).

Any minor errors made in filing the sealed part of the complaint could have been rectified. In fact, Justice in the Southern District of New York just requested that petitioner change the name in the caption of the complaint.

Justice in New Jersey said that "relator has failed to file the complaint in accordance with 31 U.S.C. § 3730."[8] The Section uses the word "may". This is because Justice must allow the complaint to go forward on behalf of the United States. This issue could easily have been resolved with a change in the caption of the sealed part of the complaint.

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[8] **b) Actions by private persons.** – (1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action ***may*** be *brought in the name of the Government.* [Emphasis supplied].

C - Due Process Was Denied In The State Courts, And The Lower Federal Courts.

Due Process is not and should not be a selective process that should be turned off and on by Courts. Due Process requires notice and opportunity to be heard, whenever a governmental body acts so as to injure an individual.[9]

There should be a court hearing to determine if

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[9] Due Process, Judicial Review, and the Rights of the individual, Judge Edward D. Re, Cleveland State Law Review, Vol. 39, 1991, page 9, "A federal court of appeals has stated that, "[w]henever a governmental body acts so as to injure an individual, the Constitution requires that the act be consonant with due process of law."(See Dixon v. Alabama State Board of Education, 294 F.2d 150, 155 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961)). Thus, courts have found state action and property interests sufficient to activate or require due process protection under the Fifth and Fourteenth Amendments in situations such as the firing of a government employee,(*See, e.g.*, Cleveland Board of Education v. Loudermill, 470 U.S. 532, 541 (1985); Connell v. Higginbotham, 403 U.S. 207, 208-09 (1971); ...)), the termination of welfare benefits (*See, e.g.*, Goldberg v. Kelly, 397 U.S. 254, 261-63 (1970).), and the suspension of a student from a public school or state university(*See, e.g.*, Goss v. Lopez, 419 U.S. 565, 574-76 (1975); ...).

the government deprivation requires a hearing.[10] There should be a timely review.[11]

The Third Circuit failed to follow the law as determined by this court in several recent cases (See Cook County, Illinois *v.* United States *ex rel.* CHANDLER (March 2003); Swierkiewicz v Sorema N.A (Feb. 2002)).

There are conflicts of law between several states related to what constitutes a rebuttable presumption that is required by 42 U.S. 667(b). In petitioner's case, and in many other similar cases, there "should

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[10] Id. at 9, "After a court has decided that there has been a deprivation of life, liberty, or property interest, and sufficient state or official government action to invoke the due process clause, the court must determine whether the person has been denied or deprived of due process of law. At a minimum, a deprivation of life, liberty, or property must be accompanied by "notice and opportunity for hearing appropriate to the nature of the case."(See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950))."

[11] Id. at 9, "Usually, the hearing must be held prior to the deprivation because it should occur "at a time when the deprivation can still be prevented."(See Fuentes v. Shevin, 407 U.S. 67, 81 (1972)). When there is a significant governmental interest in postponing the hearing, a post-deprivation hearing may be sufficient to satisfy due process requirements (*See* Dixon v. Love, 431 U.S. 105, 115 (1977);)). Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594, 599-600 (1950); ...)), although at some point the delay may be considered a constitutional violation(*See* Barry v. Barchi, 443 U.S. 55, 66 (1979))."

be no" significant government interest in postponing a COLA hearing. Issues related to COLA can and should be resolved before any government taking.

II - Due Process Is Denied When New Jersey Does Not Allow A Hearing Prior To Allocating Cost Of Living Increases To Child Support, And Hearings After The Fact Are Not Timely.

New Jersey based upon ex-parte administrative procedures, allocated a cost of living increase and increased petitioner's child support. This increase was based, in part, on child support for a 26 year old, emancipated Ph.D. Candidate (Petitioners son). There was no hearing before this increase. Petitioner demanded a hearing months prior to this unlawful "taking". However, the administrative procedures sent to petitioner and to every other party does not allow for a pre-deprivation hearing. New Jersey procedures are limited and systemically fail to allow objections before ex-parte child support COLA increases.

The procedures used advise that parties bring actions to court after the increase takes place. Petitioner objected to this procedure to the administrative authorities, in writing, but they refused to grant a hearing.

The petitioner has overpaid child support, and arrears for about six (6) years in New Jersey. New Jersey and county governments fail to keep verifiable computer or business records in their

child support collection systems. They do not, or did not track child support arrears payments and continue to collect arrears after they are fully paid. New Jersey is one of the few states that do not automatically reduce child support when children are emancipated. New Jersey's policies and procedures are in conflict with controlling Federal legislation and rules (See 45 CFR §§ 302 et seq.; See also 42 U.S.C. §§ 602 et seq.).

A - The Complaint Alleged that The Procedures Used In Allocating COLA Increases In Child Support Denies Due Process.

The first cause of action in the complaint asked for injunctive and declaratory relief. The complaint included a simple, cause of action but then expanded upon the cause of action by included large sections of a decision by this court. About 15 pages of this courts decision in Fuentes v. Shevin (See Fuentes v. Shevin, 407 U.S. 67, 81 (1972)) were quoted showing the parallels between the failure to offer a timely review or prior hearing in the COLA procedure followed in New Jersey.

The District Court said that it did not understand the complaint. In the complaint, the first section requested declaratory and injunctive relief because the COLA procedure denied procedural and substantive due process and fail to offer a timely review either prior to the taking or after the taking.[12]

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[12] The heading of this section said: ""The Essex County Child Support Collection Unit Violated "Procedural" and

Petitioner requested that a hearing be held prior to a child support Cost of Living Increase both by letter(s), and in a trial court. There were changes in circumstance and rebuttable presumptions including an emancipated child who was included in the child support cost of living adjustment (See 42 U.S.C. § 667(b)).

Then, after the Federal action was filed, petitioner again tried to have this issue heard in the State Court. The State Court closed the case pending the outcome of the Federal action. The State, however, automatically allocated and assigned another COLA increase even though petitioner objected and was denied access to the State Court.

Petitioner was again denied timely notice and an opportunity to be heard in a State Court. The Child Support COLA was ordered by Defendant Thomas Zampino, without a hearing, administratively.

The District Court dismissed this action saying that it was too complex, and there were no recognizable causes of action[13].

"Substantive" Due Process By Allocating A Cost Of Living Increase Without A Hearing, Though Petitioner Requested A Hearing, And Documented Changes In Circumstances That Would Require Child Support To Be Reduced Or Eliminated.

[13] "Your action was dismissed for two reasons. First, you failed to comply with the filing and statutory requirements of the False Claims Act (31 U.S.C. 3729, et seq.). Second, and more importantly, even if the Court had assumed that your complaint was in compliance with the requirements of the False Claims Act, the Court

III - The District Court Erred in Saying that the False Claims Action Defects Could Not Be Cured.

The false claims action had several parts. Many of the parts were already public knowledge based upon a prior action filed by the petitioner that was dismissed based upon personal jurisdiction. The other defects in the complaint could easily have been cured. It was not served upon any defendants.

A - There Were False and Excessive Claims made by Private, County And State Agencies Based Upon An Improper, Unlawful, Extended Imprisonment Of A Minority Youth, That Was Covered-Up In A Closed Hearing.

The Federal Government reimburses county governments and private agencies for services performed on behalf of the Federal Government. Malik Cooper, a minority youth, was improperly held in prison for about two extra months. He was "lost" in the system! There was a cover-up of this improper imprisonment, and the Federal Government paid extra claims and reimbursements for the time that Malik Cooper was improperly held in prison.

Petitioner received an audiotape of a hearing by accident. Prior to petitioner's court hearing of November 9, 2000, groups of people in the

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would have still dismissed your rambling and disorganized complaint for failure to meet the pleading requirements of Fed. R. Civ. P. 8."

courtroom were talking about responsibilities and payments. Petitioner did not understand what they were talking about. Petitioner ordered the tape of his hearing in court from November 9, 2000. There was part of an extra hearing on the tape that he received. The hearing was the one that immediately followed petitioners hearing, and the clerk who copied the tape inadvertently failed to stop the audiotape-copying machine.

The second hearing on the tape was a hearing where state, private, and county officials, along with a State Judge, covered up the failure of private agencies, and County and State officials to release a minor after his sentence was served. This cover-up prevented any action from being taken by Mr. Cooper, who at the time was just sixteen.

Petitioner transcribed the portion of the audiotape that contained the "Cooper" hearing. Both the transcript and the audiotape were submitted for District Court review. The transcript was submitted to the Appellate Court because the District Court judge failed to read the transcript, and petitioner believed that it was misplaced![14]

Information on the tape and in the transcript

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[14] See App. B, page 15, District Court order of Oct. 11, 2001. The District Court judge in denying reconsideration said:

> "Asking the Court to review audio tapes or appoint a special prosecutor does nothing to cure both the False Claims Act defects and Fed. R. Civ. P. 8 defects that led to the dismissal of your action."

included testimony from private actors, state actors, and county officials who were covering up a false imprisonment of a minority youth[15]. The State judge said:

> *"We are all treading on thin ice. To keep a young man who has maxed out on his sentence locked up in the Youth House ...*
>
> *Simply because somebody dropped the boat, o.k. the Ball.. excuse me.."*

And later in the hearing said:

> *"lets hope also That Malik doesn't put two and two together here ... Because if he does we run into a whole nother set of problems."*

Malik's attorney was in the court, and was aware of the violations of her client's rights, but may have been implicated for her failure to act timely or properly.

Petitioner could not contact Mr. Cooper since the hearing was closed. He has no standing to bring a civil rights action on behalf of Mr. Cooper. He did file a false claim since private parties and county governments are reimbursed by the Federal Government for part of the costs of providing services, and maintaining jails and prisons. There were false claims filed related to the reimbursement due, based upon Mr. Cooper's extended stay in prison (See Cook County, Illinois *v.* United States *ex rel.* Chandler (March 2003).

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[15] A transcript and an audiotape of the hearing are parts of the lower court record.

B - The FCA Complaint Alleged Fraud In New Jersey's Child Support Collection System.

The procedures used to collect child support, and the economic models used in New Jersey fail to take into account economic factors and over assess child support.

When State Actors function under "color of law" are they entitled to any Immunity, when the controlling Federal legislation includes language that holds them accountable? Many of the causes of action in the "sealed" part of the complaint were raised in a prior Federal action, where the action was dismissed based upon personal jurisdiction[16].

The following causes of action were included:

1. New Jersey fails to automatically include individuals in household budgets or to consider economy of scale when there is a change in circumstance like a remarriage, or when an emancipated child continues to live with the custodial parent. The failure to use the same economic standard in child support collections, as in other Federal programs administered by the state and counties results in over assessments of child support and excessive Federal bonus payments(See Anderson v Edwards 131 L Ed 2d 178, 115 S Ct _, 514 U.S. 143 (1995), See also Bowen v. Gilliard 483 U.S. 587(1987)).

[16] Petitioner was denied Certiorari in case number 01-935 filed before this court.

2. New Jersey continues to automatically collect and assess cost of living increases for emancipated children, without any pre-deprivation hearing, or timely post deprivation hearing (See Fuentes V. Shevin, 407 U.S. 67 (1972); See also Goldberg v. Kelly, 397 U.S. 254(1970)). These costs of living increases affect parties in other jurisdictions (Foreign). "Due Process" does not apply to these ex-parte administrative adjustments.[17]

3. The party receiving child support is not required to report changes in circumstance. When a child leaves school (high school or college), the child or the custodial parent knows about the event. The failure to report this change in circumstance results in over payments of child support, and excessive Federal reimbursements. (In Welfare Systems, State and local governments require recipients to report changes in

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[17] Due Process, Judicial Review, and the Rights of the individual, Judge Edward D. Re, Cleveland State Law Review, Vol 39, 1991, page 1" When there is a significant governmental interest in postponing the hearing, a post-deprivation hearing may be sufficient to satisfy due process requirements (*See* Dixon v. Love, 431 U.S. 105, 115 (1977); Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594, 599-600 (1950); North American Cold Storage Co. v. Chicago, 211 U.S. 306, 320 (1908)), although at some point the delay may be considered a constitutional violation(*See* Barry v. Barchi, 443 U.S. 55, 66 (1979)). "

circumstance so that grants and benefits can be re-evaluated.)

4. New Jersey fails to allow, in practice, a rebuttable presumption on the low end of the child support spectrum. In some cases, New Jersey courts have knowingly assessed child support to parties in other states who were collecting welfare payments based upon Federally recognized disabilities (See 42 U.S.C. § 667(b), and The Supremacy Clause, Article VI, Section [2]). There is a conflict in law since some States do allow a rebuttable presumption when a party is at or below the poverty level (Compare Rose v Moody, 83 N.Y. 2d 65(1993)).

5. Child support arrears are assigned by State Court actions where a court determines that a party owes past due child support. The arrears should be collected regularly until all arrears are collected. At that time, just like a bank loan, the collection system should automatically terminate collections. New Jersey, and "County Governments" continue to collect child support arrears after the total amount owed was collected. Arrears are not automatically terminated when amounts are paid in full. This results in over collection, extra bonuses, extra expenses, and fraud against the Federal government.

C - PSI Developed A Flawed Economic Model That

Results In Fraudulent Over Collection of Child Support.

Policy Studies Inc. (PSI) is a company engaged in all phases of child support collection in more than thirty states. PSI, economic experts, and other defendants regularly, purposely, omit criteria from their economic models that would reduce child support (ex. remarriage, others living in the household including emancipated children). These same omitted economic criteria are used in other programs where states mange the pay out of grant money for the Federal Government. (See Anderson v. Edwards 131 L Ed 2d 178, 115 S Ct _, 514 U.S. 143 (1995) see also Bowen v. Gilliard 483 U.S. 587, 97 L. Ed.2d 485, 107 S. Ct. 3008(1987)). It appears that government departments (city, county, and state) and private companies omit economic factors when they collect money from the Federal government. They include these same factors when they pay grants from their own treasuries and these same economic factors reduce payments!

6. PSI assists in, and develops many state child support guidelines and laws. PSI collects child support in at least 16 states. PSI fails to include significant groups in the economic models used to develop their guidelines that would reduce child support. They collect excessive child support and the money that they receive for collection is excessive. Several economic experts question the PSI analysis that excluded groups, and economies of scale. PSI's failure to include

or exclude groups in their models results in excessive collection, and fraud against the Federal government. Some factors PSI exclude follow.

a. Emancipated children who remain at home, contribute to the household, and impact fixed costs.

b. When there is a remarriage (or cohabit), the new party in the household should be included when calculating costs (at least 16% of all custodial parents remarry, or cohabit (U.S. Census 1990)). States are a party to marriages and know there is a change in circumstance (States keep computer records of marriages, and also of child support). A simple computer match would identify households where circumstances change).

c. There are very few adjustments for household expenses in child support guidelines. When a couple has been in a house for a very long time, and have a low mortgage, child support may be excessive (Housing is a significant factor used when calculating child support(25%)). When housing costs are lower, then child support should also reflect lower housing costs. Housing costs are lower when shared by additional household members.

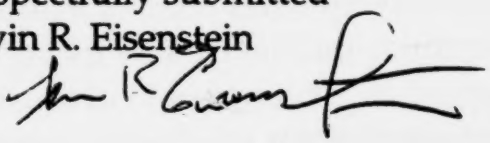
PSI benefits from excessive, fraudulent claims. Other state and county administered Federal Programs do include and use some of the factors that PSI excludes, and do computer matching to

find fraud. These same factors and computer matches are not used by PSI or their state models and systems. State and county systems fail to do simple computer matches that would result in significant reductions in amounts collected. (See Computer Matching in State Administered Benefit Programs, HHS. This is a guide supplied by Heath and Human Services provided to assist states in defining criteria to use for computer matches to detect fraud and to reducing grants.)

Conclusion

For the reasons stated above, the court should issue a writ of certiorari to review the judgment of the United States Court of Appeal for the Third Circuit.

Respectfully submitted
Irwin R. Eisenstein



Date: July 7, 2003

Appendix A Page

U.S. Supreme Court order granting an extension of time to file until July 7, 2003, Dated: (May 6, 2003) 2

U.S. Court of Appeals for the Third Circuit affirming the District Court order Dated: Jan. 9, 2003 3

U.S. Court of Appeals for the Third Circuit denying a rehearing En Banc Dated: Feb. 7, 2003 7

All Rule 28(j) requests to admit additional information and controlling decisions were denied. There were six (6) requests to supplement the record based upon newly discovered information, misstatement of material facts by the District Court Judge, and decisions by the U.S. Supreme Court that should be controlling (See Swierkiewicz v Sorema N.A 001853 decided February 26, 2002.) Each request to supplement the record was denied and said "The forgoing is denied."

Appendix A

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

Area code 202
479-3011

May 6, 2003

Mr. Irwin R. Eisenstein
601B Surf Avenue
Apartment 17K
Brooklyn, NY 11224

Re: Irwin Eisenstein
v. Thomas Zampino, et al.
Application No. 02A933

Dear Mr. Eisenstein:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Souter, who on May 6, 2003, extended the time to and including July 7, 2003.

This letter has been sent to those designated on the attached notification list.

Sincerely,
William K. Suter, Clerk
By /s Melissa A. Blalock
Assistant Clerk

UNREPORTED- NOT PRECEDENTIAL
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NO. 01-4277

IRWIN R. EISENSTEIN, and all
Similarly Situated Individuals

Appellant

v.

THOMAS ZAMPINO; JAMES TROIANO; PAULA MERCADO; DONALD VOLKER; NEW JERSEY ADMINISTRATIVE OFFICE OF THE COURTS; KAREN HABER; PSI TECHNOLOGIES, INC.; ESSEX COUNTY PROBATION; DONALD T. DI FRANCESCO

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 01-CV-02192)
District Judge: Honorable William G. Bassler

Submitted Under Third Circuit LAR 34.1(a)
November 19, 2002

Before: AUTO, BARRY, AND GARTH, CIRCUIT JUDGES
(Filed: January 9, 2003)

OPINION

PER CURIAM

Irwin R. Eisenstein appeals from a District Court order denying his motion for reconsideration of an

order dismissing his complaint for failure to comply with the requirements of the False Claims Act, 31 U.S.C. § 3729, et seq., and for failing to meet the pleading requirements of Fed. R. Civ. P. 8.

We review the denial of a motion for reconsideration for an abuse of discretion. Koshatka v. Philadelphia Newspapers. Inc., 762 F.2d 329, 333 (3d Cir.1985). "Because an appeal from a denial of a Motion for Reconsideration brings up the underlying judgment for review, the standard of review varies with the nature of the underlying judgment." McAlister v. Sentry Ins. Co., 958 F.2d 550, 552-53 (3d Cir.1992) (citations omitted). A District Court's dismissal of a case pursuant to Rule 8 is likewise reviewed for abuse of discretion. In re Westinghouse Sec. Litig., 90 F.3d 696, 702 (3d Cir. 1996).

After considering the arguments made on appeal, we affirm for essentially the reasons stated by the District Court in its letter opinion of October 11, 2001.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NO. 01-4277

IRWIN R. EISENSTEIN, and all
Similarly Situated Individuals

Appellant

v.

THOMAS ZAMPINO; JAMES TROIANO; PAULA MERCADO; DONALD VOLKER; NEW JERSEY ADMINISTRATIVE OFFICE OF THE COURTS; KAREN HABER; PSI TECHNOLOGIES, INC.; ESSEX COUNTY PROBATION; DONALD T. DI FRANCESCO

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 01-CV-02192)
District Judge: Honorable William G. Bassler

Submitted Under Third Circuit LAR 34.1(a)
November 19, 2002

Before: AUTO, BARRY, AND GARTH, CIRCUIT JUDGES

JUDGMENT

This cause came on to be heard on the record from

the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this court that the judgment of the District Court entered June 6, 2001 and the order entered October 17, 2001 be and the same are hereby affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:
/s Marsis M. Waldron
Clerk

DATED: January 9, 2003

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 01-4277

IRWIN R. EISENSTEIN, and all
Similarly Situated Individuals

Appellant
v.

THOMAS ZAMPINO; JAMES TROIANO; PAULA MERCADO; DONALD VOLKER; NEW JERSEY ADMINISTRATIVE OFFICE OF THE COURTS; KAREN HABER; PSI TECHNOLOGIES, INC.; ESSEX COUNTY PROBATION; DONALD T. DI FRANCESCO

SUR PETITION FOR REHEARING

Present BECKER, Chief Judge, SLOVITER, SCIRICA, NYGAARD, ALITO, ROTH, McKEE, RENDELL, BARRY, AMBRO, FUNTES, and SMITH, Circuit Judges, and GARTH, Senior Circuit Judge*

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing

by the court en banc, the petition for rehearing is denied.

*As to panel rehearing only.

By the Court,
/s xxxxxxxxxxx
Circuit Judge

DATED: FEB 07, 2003

Appendix B Page

U.S. District Court Order dismissing the action dated: June 1, 2001. 10

U.S. District Court Order dismissing a request for reconsideration dated: Oct. 11, 2001. 12

Appendix B

ROBERT J. CLEARY
United States Attorney
STUART A. MINKOWITZ
Assistant United States Attorney
970 Broad Street, Suite 700
Newark, New Jersey 07102
(973) *645-2925*
SAM-2692

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IRWIN R. EISENSTEIN, **Hon. William G. Bassler**

Plaintiff(s), Civil Action No. 0 1-2192
V. **ORDER**

CHRISTIE WHITMAN (or Governor Donald T. DiFrancesco); NEW JERSEY ADMINISTRATIVE OFFICE OF THE COURTS; ESSEX COUNTY PROBATION (Paula Mercado); PSI TECHNOLGIES, INC. (Policy Studies, Inc.); JAMES TROIANO; THOMAS ZAMPINO; DONALD VOLKER, JR.; KARIN HABER; JOHN DOE; and JANE DOE,
Defendant(s).

FILED
June 1, 2001

The United States of America ("United States") through its counsel, Robert J. Cleary, United States

through its counsel, Robert J. Cleary, United States Attorney, District of New Jersey (Stuart A. Minkowitz, Assistant United States Attorney, appearing), having filed its Notice of Election to Decline Intervention, pursuant to 31 U.S.C. § 3730(b)(2)(A), and Suggestion of Dismissal, the Court rules as follows:

IT IS on this 1st day of June, 2001;

ORDERED that the entire Complaint, the United States' Notice of Election to Decline Intervention, and this Order be unsealed; and it further

ORDERED that the seal be lifted as to all other matters concerning the Complaint occurring in this action after the date of this Order; and it is further

ORDERED that the complaint be and hereby is dismissed for failing to comply with the filing and statutory requirements of the False Claims Act (31 U.S.C. § 3729 et seq.), and the pleading requirements of Fed. R. Civ. P. 8.

/s William G. Bassler
HON. WILLIAM G. BASSLER,
Judge

United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
WILLIAM G. BASSLER
JUDGE

MARTIN LUTHER KING JR.
FEDERAL BUILDING & U.S. COURTHOUSE
50 WALNUT ST., ROOM 5060
P. O. BOX 999
NEWARK, NJ 07101-0999
(973) 645.2981

October 11, 2001

Irwin R. Eisenstein
c/o 601 b Surf. Ave. 17k
Brooklyn, New York 11224

Plaintiff Pro Se

LETTER ORDER FILED WITH THE CLERK OF THE COURT DENYING THE PLAINTIFF'S MOTION FOR RECONSIDERATION OF June 1, 2001 ORDER

Re: Eisenstein v. Zampino, 01-2192 (WGB)

Dear Mr. Eisenstein:

The Court has received your "Notice and Demand for Reconsideration, Explanation, and Clarification, of the order from the Justice Department signed June 1, 2001 by Judge William Bassler." It appears that your motion is most properly characterized as a Motion for Reconsideration pursuant to Local Rule of Civil Procedure 7.1(g). Accordingly, it will be treated as such. After a review of your multiple post-dismissal submissions and of your complaint, the Court hereby **denies** your motion.

A motion for reconsideration under Local Civil Rule 7.1(g) must set forth "the matters or controlling decisions which counsel believes the Judge or Magistrate has overlooked." A court may grant a motion for reconsideration based upon an intervening change in the law or new, previously unavailable evidence. Natural Resources Defense Council v. U.S. E.P.A., 705 F. Supp. 698, 702 (D.D.C. 1989) (citations omitted). A party seeking reconsideration under Local Rule 7.1(g) must do more than disagree with the Court's decision. Mere "recapitulation of the cases and arguments considered by the Court before rendering its original decision fails to carry the moving party's burden." G-69 v. Degnan, 748 F. Supp. 274, 275 (D.N.J. 1990);see also Fontenot v Mesa Petroleum Co., 791 F.2d 1207, 1219 (5th Cir. 1986); Youmans v. Simon, 791 F.2d 341, 349 (5th Cir.- 1986).

A motion for reconsideration is improper when it is used "to

ask the Court to rethink what it has already thought through--rightly or wrongly." Oritani Sav. & Loan Ass'n v. Fidelity & Deposit Co. of Md., 744 F. Supp. 1311, 1314 (D.N.J. 1990) (citations omitted), rev'd on other grounds, 989 F.2d 635 (3d Cir. 1993). Finally, "only if the matters which were overlooked, if considered by the Court, might reasonably have resulted in a different conclusion will the court entertain such a motion." Polizzi Meats, Inc., 931 F. Supp. at 339.